

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JAMES LEE ADAMS
TX-1335795-R

§
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§

DOCKET NO.
329-10-4435.ALC

COMPLAINT NO. 09-011

FINAL ORDER

On this 18th day of February, 2011, the Board considered the above-noted matter.

After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. Respondent filed exceptions; petitioner filed a reply. The ALJ reviewed the exceptions and reply but did not modify her proposal for decision.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order, with the following change:

Conclusion of law No. 10 is modified to read, "Based on the foregoing Findings of Fact and Conclusions of Law, the Board should revoke Respondent's appraiser certification and should make a determination that Respondent may not apply for reinstatement of his certification until the fifth anniversary of the date of revocation.


The justification for this change is the magnitude of the harm to the public, including the \$3.5 million in losses to financial institutions as a result of the Respondent's actions.

All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the appraisal certification of JAMES LEE ADAMS is hereby **REVOKED**, effective twenty days after the date JAMES LEE ADAMS is notified of this Final Order. It is further ordered that JAMES LEE ADAMS shall not apply for reinstatement until the fifth anniversary of the date of revocation.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and signed this 18th day of February, 2011.



Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
November 16, 2010

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

INTER-AGENCY

**RE: Docket No. 329-10-4435.ALC; Texas Appraiser Licensing and Certification Board
vs. James Lee Adams, TX-1335795-R**

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Catherine C. Egan".

Catherine C. Egan
Administrative Law Judge

CCE:nl

Enclosure

xc: Kerri O'Brien, 2901 Bee Caves Road, Austin, TX 78746 - **VIA REGULAR MAIL**
Troy Beaulieu, 1101 Camino La Costa, Austin, TX 78752 **VIA-INTER-AGENCY**

**SOAH DOCKET NO. 329-10-4435.ALC
(CERTIFICATION NO. TX-1335795-R)**

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
	§	OF
V.	§	
	§	
JAMES LEE ADAMS,	§	
TX-1335795-R,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Appraiser Licensing and Certification Board (Staff/Board) brought action against James Lee Adams (Respondent) to revoke his real estate appraiser certificate for violating the Texas Appraiser Licensing and Certification Act (the Act), TEX. OCC. CODE ch. 1103, and the Board's rules. Specifically, Staff alleged that Respondent prepared and signed three appraisal reports that were deliberately misrepresentative and failed to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as required. The Administrative Law Judge (ALJ) finds that the preponderance of the evidence establishes the alleged violations and recommends that Respondent's certification be revoked, but that Respondent not be prohibited from requesting reinstatement of his certification in the future.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on September 13, 2010, before ALJ Catherine C. Egan, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff Attorney Troy Beaulieu represented Staff. Attorney Kerri O'Brien represented Respondent. The hearing concluded

on September 14, 2010. The record closed on September 17, 2010, following the receipt of the parties' supplemental closing arguments.¹

II. DISCUSSION

A. Background, Parties' Positions, and Legal Standards

This case concerns three appraisal reports prepared by Respondent between June 2006 and January 2007. Respondent is a Texas state-certified residential real estate appraiser who holds certificate number TX-1335795-R. Following his completion of 2500 hours as an appraiser trainee, Respondent was certified on February 6, 2006.² Staff alleges that Respondent violated the Act, the Board's rules, and the USPAP in appraising three properties known as the Elgin, City Park, and Hickory properties (the properties) by producing intentionally inflated, misrepresentative, unreliable and otherwise deficient real estate appraisal reports. Alternatively, Staff alleges that Respondent was grossly negligent in the preparation of these appraisals.

Respondent prepared all three appraisals so mortgage lenders could determine if the value of the collateral (the property) was sufficient to secure the loan. Each appraisal was prepared using the *Uniform Residential Appraisal Report* Fannie Mae/Freddie Mac form. The first line of this form states that the purpose of the report is to "provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property."³ In response to questioning by Staff, Respondent agreed that an appraiser is supposed to provide a disinterested and objective valuation of the property. In order to do so, Respondent stated that an appraiser must conduct an on-site inspection and collect and analyze relevant data from the Multiple Listing Service (MLS) and the Appraisal Districts. He agreed that all residential appraisals must be prepared in compliance with the USPAP in effect at the time.

¹ Respondent's response to Staff's Supplemental Closing Argument (filed at 4:41 p.m. on September 16, 2010) was sent to SOAH by facsimile on September 16, 2010, at 11:13 p.m. In accordance with SOAH's procedural rules, it is deemed received the following day, September 17, 2010. 1 TAC § 155.101.

² Staff Ex 1A and B.

³ Staff Ex. 4H at 000045.

Staff accuses Respondent of violating § 1103.405 of the Act, 22 TEX. ADMIN. CODE (TAC) §§ 153.20(a)(3)(7)(8) and (9), and 155.1(a). Section 1103.405 of the Act requires all licensees to comply with the most current edition of the USPAP and the standards set out in the Board's rules that are at least as stringent as the USPAP.⁴ The pertinent Board rules authorize the Board to suspend or revoke a license if the licensee: (1) fails to comply with the USPAP in affect at the time;⁵ (2) has offered to perform appraiser services, or agreed to perform such services, or has accepted payment for appraiser services contingent upon reaching a pre-determined appraisal value,⁶ and (3) has made a material misrepresentation or omission of material fact.⁷ Among other things, the USPAP ethic rules require appraisers to maintain a work file containing all data, information, and documentation to support their opinions, analyses, and conclusions. USPAP also prohibits appraisers from accepting an assignment that requires the reporting of a pre-determined value.⁸

Respondent admits he made mistakes in the appraisals, and that he violated the applicable USPAP. But, he insists that the mistakes were unintentional and due to his inexperience with the type of properties he was appraising and the inappropriate training he received from his sponsor while an appraiser trainee. Many of his mistakes he claimed resulted from cloning (copying) from another appraisal report. Respondent testified while he knows better now, at the time he did these three appraisals he believed he did them correctly.

B. The Evidence

As discussed above, a Certified Residential Real Estate Appraiser should evaluate the market value of residential property by analyzing various factors that bear upon the value of property. This includes applying the appropriate valuation approach to arrive at an opinion of the property's value.

⁴ TEX. OCC. CODE § 113.405.

⁵ 22 TAC § 153.20(a)(3).

⁶ 22 TAC § 153.20(a)(7) and (8).

⁷ 22 TAC § 153.20(a)(9).

⁸ Staff Ex. 3E and 3F.

The three approaches to determining the market value are the cost, sales, and income approaches. The cost approach involves collecting and analyzing data to determine the value based on the cost to build a property minus depreciation plus the cost of the land. The sales comparison approach requires locating other similar properties to the property being appraised that have sold within the year. Factors to consider include location, gross living area, lot size, and age. The income approach focuses on analyzing the property's income production, such as rental revenue.⁹

Licensed appraisers are required to comply with the USPAP and the Board's rules. A Certified Residential Real Estate Appraiser, such as Respondent, may appraise one-to-four residential units, and vacant and unimproved land for which the highest and best use is for one-to-four residential units. Only a Certified General Real Estate Appraiser may appraise all types of real property.¹⁰

Staff stressed that mortgage lenders rely on an objective appraisal in evaluating whether the collateral is sufficient to justify the loan. The veracity and credibility of real estate appraisals prepared for mortgaged loans cannot be over-emphasized. If the appraisal misrepresents the market value of the property, the mortgage lender's decision will likewise be flawed.

On July 3, 2008, Staff Investigator Mark Loftus received a letter from an Assistant U.S. Attorney stating that 16 individuals were being criminally prosecuted in *United States v. Cornelius Robinson et al*, Cause no. A-08-CR-001 (SS), for real estate fraud that was facilitated by questionable appraisals, including the three in issue.¹¹ On September 29, 2008, the U.S. Department of Justice filed a complaint with Staff asserting that Respondent had violated the USPAP in appraising the Elgin, City Park, and Hickory properties.¹² Staff properly notified Respondent about the complaint.

⁹ The income approach is not an issue in this matter.

¹⁰ 22 TAC § 153.8.

¹¹ Staff Ex. 4G.

¹² Staff Ex. 4G.

Following its investigation, Staff concluded that Respondent deliberately made false statements in the appraisals to reach a pre-determined and inflated value that resulted in the financial loss of millions to the lenders.¹³ Investigator Loftus opined that, had all the errors and omissions merely been mistakes, the outcome in values would have varied. But, all of these appraisals had inflated values indicating that the appraised amounts were not due to mistakes. In response to Respondent's argument that he did not receive any financial incentive for these appraisals beyond his standard fee, Investigator Loftus disagreed. According to Investigator Loftus, appraisers who make inflated appraisals do not do so for the immediate payoff, but for the continued business, which he testified can be substantial.

Delores Kraft-Longoria, Director of the Board's Standards and Enforcement Division, explained that if an appraisal is inflated the person perpetrating the fraud collects the difference between the actual value of the property and the loan. For example, if the property is only worth \$100,000 and the appraisal is inflated to show a market value of \$150,000, \$50,000 is pocketed. Ms. Kraft-Longoria emphasized that the USPAP sets out the minimum standards that an appraiser must follow in this state and nationally. Because the USPAP changes biannually, it is important to refer to the version of the USPAP used on the date of the appraisal report.

According to Respondent, despite having 2500 training hours before he was certified, he had never appraised these types of properties. He agreed that as a Certified Residential Real Estate Appraiser, his evaluation of the market value of any property should include an on-site inspection, a review of the MLS property listings, and a review of the Appraisal District records. He testified that he conducted an on-site inspection for the three properties, and spent 10 to 12 hours working on each appraisal.

Respondent recognized that he signed these appraisals swearing to the veracity of the reports. But, he emphasized that the appraisals were completed shortly after he opened his own company,

¹³ Staff Ex. 25.

Academy Appraisal Group, and after having worked for a sponsor who always pushed for the rapid completion of appraisals. While he no longer worked for this sponsor when he did the appraisals, Respondent testified that he still relied on what his sponsor had taught him in completing them, some of which was wrong. Respondent also pointed out that he received no financial benefit for these appraisals other than the standard payment for an appraisal (\$450-\$550).

When questioned about the omissions and errors in the appraisals, Respondent explained that during this period, he used templates to get the appraisals done quickly. But, he vehemently denies that he was trying to reach a pre-determined amount. He stressed that his sponsor's philosophy regarding the appraisal business was, "you eat what you kill." Respondent understood that to keep his job he had to keep up and get the appraisals done quickly—in his words "churn and burn." Once he opened his own business, Respondent testified that he went to several appraisal courses and he now only accepts the appraisals he is qualified to do, no longer clones from other appraisals indiscriminately, and has set up a peer review so a second set of eyes reviews each appraisal. Respondent stressed that at the time he prepared the appraisal reports he had not taken on more work than he could handle, but thought he was competent to do them. He now knows that all three were outside his expertise.

The following is a summary of the evidence by property.

1. The Elgin Property

The Elgin property, located at 1345 Upper Elgin River Road, Elgin, Texas, was appraised on January 19, 2007. It was a single family residence situated on 144.36 acres of land and was under contract for \$850,000. Respondent's client was Infinity Lending, but he was hired and paid by the owner of the property, Waterfall Real Estate Investments. Respondent appraised the property for \$850,000 using the sales comparison approach, and for \$844,144 using the cost approach.¹⁴ He

¹⁴ Staff Ex. 4H at 000045.

reported that the property had a typical utility easement and had no adverse site conditions. He also reported that additional features of the house included french-doors, built-in shelving, coffered ceilings, recessed lighting, a programmable thermostat, a walk-in pantry and closet, a media room, 42-inch kitchen cabinets, and a balcony.

Respondent attached to the appraisal report six photographs, allegedly of the interior of the house. These photographs were of a finished bathroom, a walk-in closet, a high-end kitchen, and a room with windows facing a porch. In the supplemental addendum to the report, Respondent documented that the property was fully updated in design and had recently undergone a complete renovation.

Investigator Loftus conducted a “desk-top review” of the complaint against Respondent for the Elgin property and prepared his August 23, 2010, written report summarizing his findings.¹⁵ After consulting with Ms. Kraft-Longoria, Investigator Loftus found that Respondent’s work file lacked the data, information and documentation to support the opinions and conclusions contained in his appraisal report, an ethical violation under USPAP. In addition, he found that Respondent failed to review the purchase agreement, to conduct a neighborhood analysis, to secure valid comparable sales, and to provide the cost estimate details used in his cost approach analysis. Because the property had over 144 acres of pasture land, Investigator Loftus stated Respondent was not certified to perform this appraisal; it required a Certified General Real Estate Appraiser. Consequently, Respondent used the wrong form to complete the appraisal—the *Uniform Residential Appraisal Report* form.

Investigator Loftus concluded that Respondent did not comply with the USPAP or state laws and rules in preparing the Elgin property appraisal. He based his conclusion that Respondent acted intentionally primarily because in the report Respondent:

¹⁵ Staff Ex. 5N.

- attached photographs of the interior of another home showing completed renovations as though they were of the Elgin house. The Elgin renovations were in the early stages, but the photographs were of a finished-out high-end kitchen, bathrooms, a walk-in closet, and a finished room. Respondent also commented in his appraisal that the renovations were finished, as reflected in the photographs;
- reported the improvement conditions as “Good” when the improvement renovations had just begun;
- represented that the improvements to the bathrooms, fixtures, cabinets, programmable thermostat, and recessed lighting were completed when they were not;
- represented that the property had no adverse easements and did not lie in a flood zone when the property has a 170-foot power line easement running the length of the land, a high voltage tower within 500 feet of the house, and part of the property was in the 100-year flood plain;
- used a comparable sale from a property that sold more than a year prior to the appraisal’s effective date without disclosure or explanation;
- represented that the property was within the city limits when it was not; and
- represented that the property had no fencing despite a survey showing that the property had boundary fencing and cross fencing.

Ms. Kraft-Longoria is a Certified General Real Estate Appraiser. After reviewing Respondent’s appraisal and work files, the complaint and response, and the MLS and the CAD,¹⁶ she stated that she agrees with Investigator Loftus’s findings. In her opinion, Respondent purposely inflated the appraisal for the Elgin property as evidenced by the photographs attached to the appraisal that were not of the Elgin property’s interior, the affirmative representations that the property had no adverse easements when there is a 170-foot easement running through the property, and the affirmative representation that the property was not in a flood zone when a substantial portion of the land is in the 100-year flood plain.

¹⁶ County Appraisal District.

In response to Respondents assertions that these mistakes were due to cloning from another appraisal report, Ms. Kraft-Longoria strongly disagreed. She pointed to the language Respondent used in his commentary on improvements in the appraisal to refute this claim. In the Supplemental Addendum, Respondent wrote:

Commentary on Improvement,

The subject property has recently undergone a complete renovation to include an additional floor of living space, reconfiguration of existing rooms throughout house, new fixtures, new appliances, new flooring, new central air and furnace units, new windows, new doors, construction of upper balcony area. Per field notes of the onsite inspection the property was deemed to be of superior construction quality. No function or location inadequacies were noted during onsite inspection. Renovations completed to date appear to have been completed in a workmanlike manner.¹⁷

Respondent also noted in the same addendum that the property was fully updated in design. These comments, coupled with Respondent's representations on the first page of the appraisal and the six interior photographs, indicated a consistent theme throughout the appraisal that the house had been recently renovated, when it had not. Ms. Kraft-Longoria stressed that nowhere in the appraisal did Respondent clearly disclose that the renovations were just beginning and that the house was in disrepair.

Ms. Kraft-Longoria also questioned the addition of \$100 per square foot to Respondent's cost analysis. According to the appraisal, the source of the cost per square foot was Marshal & Swift's *Residential Cost Handbook* for the first quarter of 2007. However, when Ms. Kraft-Longoria checked Marshall & Swift's handbook, it reported the cost to be \$50.67 per square foot, not \$150 as reported by Respondent.¹⁸ She noted that Respondent also failed to value the land and to depreciate the cost of the house and barn. Finally, Ms. Kraft-Longoria questioned Respondent's choice of comparables. Four of the comparables were horse facilities with good barns and fencing. The Elgin property did not have either. After reviewing the MLS, Ms. Kraft-Longoria confirmed that three

¹⁷ Staff Ex. 4 at 000051.

¹⁸ Staff Ex. 5N at 000157-000158.

other properties were available to Respondent and were more comparable to the Elgin property. Had Respondent used these comparables, it would have been evident that his appraised value for the Elgin property was inflated.¹⁹ In her opinion, Respondent selected the four horse facilities as comparable properties to inflate the market value of the Elgin property.

Ms. Kraft-Longoria explained that Respondent was not even certified to perform this appraisal. According to Ms. Kraft-Longoria, the highest and best use of property determines that type of appraisal to be done. The highest and best use of the Elgin property is agricultural or recreational, not residential property. Consequently, she maintains that only a Certified General Real Estate Appraiser have could performed this appraisal.

Staff called Silvia Seelig to testify. Ms. Seelig, the owner of Waterfall Real Estate Investments, is currently serving time at the Bryan Federal Prison Camp for her involvement in criminal real estate fraud that included these three properties. She testified that she paid Respondent for the appraisals and confirmed that the appraisals were used to secure mortgage loans.

Ms. Seelig verified that at the time the Elgin property was appraised, the bathrooms in the house had no toilets or sinks, the floors were raw concrete or were bare, the closets were not finished out, and the house did not have any windows that looked like the room in the picture submitted with the appraisal. According to Ms. Seelig, she took the interior pictures that Respondent submitted with the Elgin appraisal. These pictures were not from the Elgin property, but were from another property. She said she remembers taking the pictures because the kitchen was bright yellow.

As for the property, Ms. Seelig agreed that electric power lines with towers ran through the property; that the barn was in poor condition; and that the house did not have a front porch as depicted in the appraisal photograph. She also confirmed that there was a dump site behind the house. She denied ever telling Respondent to appraise the property at a specific value, but conceded that she is in prison because of the fraud committed using this appraisal.

¹⁹ Staff Ex. 10-15.

Respondent agreed that six interior photographs contained in his appraisal report are not of the Elgin property. He said he did not take these photographs and believes that he inadvertently pulled them from another appraisal used to build this appraisal—what he called cloning. Respondent admitted he made a mistake. Respondent conceded that the renovations were not done and explained that he prepared the appraisal as though they were complete and thought that use of the words “to date” would tip off the lender that the renovations were not finished. As for marking the words “as is,” instead of “subject to,” the correct designation for property still undergoing renovations, Respondent claimed that this was simply a cloning error. Overall, Respondent acknowledged that his appraisal report was not accurate, but affirmed that at the time, he believed the report was accurate.

In response to why he did not disclose the giant power lines and towers that went through the property, Respondent replied that the power lines and towers would not affect the market value. However, he recognized that he should have disclosed the tower near the house. Respondent also agreed that 60-70 acres of the Elgin property was in the flood plain, even though his appraisal states that the property is not in the flood plain.

When questioned as to why he did not admit these mistakes in his response to the complaint, Respondent had little to say other than he made a mistake. During cross-examination, Respondent agreed that he met Cornelius Robinson (a defendant in the criminal fraud case) at the property and spoke with him, but denied they discussed the value to be arrived at in his appraisal. He also agreed that for each appraisal, he signed a certification that he was qualified to perform the appraisal.

2. The City Park Property

On September 26, 2006, Respondent appraised the City Park property, a single family residence located at 4412 City Park Road, Austin, Texas, for \$3,200,000, using the sales comparison approach, and for \$3,200,083 using the cost approach. Respondent’s client was the Funding Group, but Ms. Selig hired and paid him. The property was listed for \$3,000,000.

Staff accused Respondent of violating the USPAP ethics rules and the Board Rules by reaching a predetermined inflated appraisal value and by failing to keep a complete work file that contained all the data, information, and documents necessary to support his opinions, analyses, and conclusions. Staff also asserted he misrepresented the site condition and failed to: (1) analyze the market trends in the area; (2) disclose the property's listing history; and (3) properly determine the property's highest and best use. Finally, Staff challenged the veracity and credibility of Respondent's cost and sales analyses.

Investigator Loftus reviewed Respondent's appraisal and work file for the City Park property, a two-story home with 8,943 square feet of living space with a two-story guest home located on a 3.06-acre site.²⁰ Data from the Travis County Appraisal District and the MLS were used to verify data in the appraisal and to gather new data. After his review, Investigator Loftus concluded that Respondent did not comply with the USPAP, the Act, or the Board Rules and that his appraisal was intentionally misleading.

Of particular concern to Investigator Loftus was Respondent's representation that the property had not been offered for sale in the twelve months prior to the effective date of the appraisal, September 26, 2006. The property was listed in MLS for sale during this time period. On May 18, 2006, the property was listed for \$2,400,000. It was still actively listed for sale on the effective date of the appraisal (September 26, 2006) and on the date the appraisal was signed, January 4, 2007. On that date, a contract was pending on the property for \$2,190,000. Despite this active listing, Respondent appraised the property at \$3,200,000. Overlooking this listing was deliberate, according to Investigator Loftus, because all appraisers know to look up the subject property on MLS to see if it is listed for sale.

Investigator Loftus also asserted that Respondent provided no support for his opinion of the site value or the estimated cost of improvements, both of which were inflated, and he failed to obtain and analyze the purchase agreement. Similarly, Respondent's choice of comparable sales was

²⁰ Staff Ex. 4J and 5O.

questionable because Respondent ignored two sales of real estate north of the Colorado River where the property was located. Instead, without comment or adjustment, he used sales from superior locations, one of which had significantly more acreage. The result was an inflated market value of the property. In Mr. Loftus's opinion, Respondent did what he had to do to reconcile the sales approach using a preordained value.

Respondent testified that he did an on-site inspection and reviewed the MLS, and the County Appraisal District records in preparing this appraisal. However, Respondent reported in his appraisal that the property had not been listed for sale in the twelve months before the appraisal effective date, when it had. According to Respondent, he missed that the property was listed in MLS in May 2006 for 146 days at \$2.4 million to \$2.19 million. Although Respondent looked at what he believed were comparables, the Staff pointed out that one comparable used by Respondent, 1677 Flintrock, had 35 acres, while this appraised property only had 3 acres. Respondent testified that at the time he believed that was a proper comparable, but now he knows it is not.

3. The Hickory Property

Respondent appraised the Hickory property, located at 3303 Hickory Creek Cove, Austin, Texas, on June 28, 2006, shortly after he started his own appraisal business. The Hickory property was under contract for \$3,300,000. Respondent neither analyzed the property using the cost approach, nor explained why he elected not to do so.²¹ As in the previous appraisals, Staff complained that Respondent violated the USPAP ethics rules by intentionally inflating the property value to reach a pre-determined value, and by failing to keep a work file with all the data, information, and documents necessary to support his opinions, analyses, and conclusions. Staff accused Respondent of incorrectly reporting the zoning for the property and making various misrepresentations about the property owner, the property's listing history, and the property's connection to the public sewer system. As for the property's condition, Staff claimed that

²¹ Staff Ex. 4L.

Respondent misrepresented both the interior and exterior conditions of the residence. Again, Staff challenged how Respondent performed his sales analysis.

Investigator Loftus's review of Respondent's appraisal and work file for the Hickory property found that Respondent violated the USPAP because his work file was incomplete and did not support his appraisal. He also opined that Respondent pre-determined the value of this property as well.

In support of his position, Investigator Loftus noted that the Hickory home was very unusual. It was a four-story concrete metal and glass home with an inside koi pond, an elevator, a hard-to-navigate kitchen, a mosaic tile bathroom done by an artist, a modern metal staircase, as well as many other characteristics that should have been factored into the appraised value. Despite all the modern and unique features inside and outside of the house, Respondent reported that the property generally conformed to the neighborhood, a neighborhood of conventional two-story estate homes.

Respondent represented in the appraisal that the property had no known prior sales. In reality, the property had multiple sales—four sales in three years. In April 2008, the property sold for \$885,000; in January 2008, it sold and had a mortgage of \$2.8 million; in November 2006, it sold for \$2 million, and in October 2005, it sold for \$1.9 million. Waterfall Real Estate Investment was the buyer in October 2005 and January 2008. Respondent said he did not know about these prior sales until the complaint. As a result, he analyzed the comparables, and appraised the property at \$3.7 million.²²

As for Respondent's cost analysis, Investigator Loftus testified that the property was too overbuilt to effectively use the cost approach to determine its market value. Likewise, few properties could be comparable to this property because it was so unusual. But, the comparables that

²² Staff Ex. 21.

Respondent used, Investigator Loftus alleged, were not at all comparable to the property and therefore the analysis is flawed.

According to Respondent, until he took the appraisal courses in 2007, he did not realize he was sticking his neck out with his appraisal of such unique property. Respondent now realizes that he should have considered in his appraisal the Hickory property's unique features, such as the inside koi pond, elevator, guest quarters, open ceiling, unusual tile work, and an unusual kitchen layout. Respondent now agrees that the house does not really fit into the neighborhood, but at the time he thought it conformed.

As for the cost approach method of evaluating the market value of the property, Respondent stated he did not do one. Instead, he relied solely on comparables of new property in the area.

C. Sanctions

Staff recommended revocation of Respondent's certification. Investigator Loftus testified that the evidence shows that either Respondent deliberately inflated these three appraisals, or he was grossly negligent. The deceptive appraisals for these three properties, Investigator Loftus calculated, resulted in an estimated gross loss to the lenders of \$3,000,000.

Respondent testified that he is not the appraiser he was back in 2006 and 2007. He explained that he has taken several appraisal courses to correct any bad habits he may have learned from his sponsor, and additionally, has put in place a peer review process at his business to ensure no appraisal is issued unless it has been reviewed. Respondent recognizes that some sanction may be warranted, but asked that his conduct following these appraisals be considered by the Board, and that his certification not be revoked so that he can continue his career as a real estate appraiser.

Respondent called Frank Lucco to testify on his behalf as an expert. Mr. Lucco is employed by IRR Residential Appraisers in Houston, Texas, and is a Certified General Real Estate Appraiser.

For the past several years, Mr. Lucco has been a member of the Associate of Certified Fraud Examiners, who investigates appraisals to uncover evidence of fraudulent or misrepresentative appraisals. Mr. Lucco reviewed Respondent's appraisals and work files and concluded that while the appraisals were not reliable due to misrepresentations and omissions, the mistakes were not intentional but the result of inexperience and poor training. He explained that had Respondent been engaged in fraud, he would have written better appraisals, and testified that what he observed in Respondent's appraisals and work files was a tremendous amount of incompetence. In his opinion, all of the errors and omission made by Respondent in the appraisals could be remedied by training and experience. Therefore, Respondent requested that the Board impose a lesser sanction than revocation.

D. Analysis and Recommendation

Respondent did not dispute that the appraisals were riddled with mistakes. But, he adamantly denies that he had any intention to be misleading, or to arrive at a pre-determined value for the properties. He blamed these errors and omissions as the result of his inexperience, poor training, and because of cloning errors. His habit of cloning, he submits, resulted in his inadvertently inserting inaccurate information in the appraisal.

This explanation might be believable for the City Park and Hickory properties, but not for Respondent's appraisal of the Elgin property. In this appraisal, Respondent not only attached photographs taken of the interior of another home showing a finished bathroom, a built-in closet, a high-end kitchen, and completed room, he also wrote on the first page of the appraisal that numerous improvements had been completed, and made similar representations in the appraisal's addendum. To consistently misrepresent that the interior renovations were almost complete through photographs and the written word belies Respondent's claim that the errors in this appraisal were accidental.

Respondent's blatant misrepresentation of the property's condition and his failure to disclose obvious adverse conditions of the property (huge power lines and towers) could serve only one

purpose and that was to arrive at a pre-determined value. His actions were intentional and resulted in financial loss to the lending institution.

Respondent's argument that he had no financial motive to inflate the value of the property because he was paid the same amount regardless of the appraised value is equally flawed. While Respondent may not have received immediate compensation for the inflated appraisal, the potential of a pleased client sending additional work to Respondent's fledging appraisal company is motive enough. But, equally noteworthy, is that Respondent quickly modified how he performed appraisals, took several appraisal courses to hone his skills, and has since not been shown to engage in any deceitful or misleading appraisals. The ALJ finds that the evidence establishes that Respondent deliberately prepared misleading, fraudulent, unreliable, and inflated appraisal reports for these three properties that warrants the revocation of his certification.

However, it is important to consider that since that time Respondent has been steadfast in his efforts to increase his knowledge in the appraisal business and to insure that the appraisals released from his business are reliable. He has taken numerous appraisal courses to perfect his abilities as an appraiser. This consistent behavior should not be overlooked. Respondent recognized the limitations of his training and invested time and money in learning how to properly perform residential appraisal. He has since set up an internal peer review for the appraisal done at his company to ensure that the appraisals are as accurate as humanly possible. Therefore, the ALJ does not recommend that Respondent be denied the opportunity to seek reinstatement in the future.

III. FINDINGS OF FACT

1. James Lee Adams (Respondent) is a Texas State Certified Residential Real Estate Appraiser holding certificate number TX-1335795-R issued by the Texas Appraiser Licensing and Certification Board (Board).
2. Respondent was began performing residential real property appraisals as an appraiser trainee in 2003 and was certified by the Board on February 6, 2006.
3. Other than the complaints that are the basis of this action, Respondent has no disciplinary history with TALCP.

4. Respondent appraised the following properties:
 - a. the Elgin property located at 1345 Elgin River Road, Elgin, Texas, a single family residence on over 144 acres of land, on January 19, 2007;
 - b. the City Park property located at 4412 City Park Road, Austin, Texas, a single family residence, on September 26, 2006; and
 - c. the Hickory property located at 3303 Hickory Creek Cove, Austin, Texas, a single family residence, on June 28, 2006.
5. Respondent conducted and signed the appraisals for the properties set out above.
6. The Elgin, City Park, and Hickory property appraisals (the appraisals) were prepared for the purpose of securing mortgage financing and to aid the lender in determining the value of the property as collateral.
7. Respondent's work files for the appraisals were incomplete and failed to include supporting documentation for his analysis as required by the Uniform Standards of Professional Appraisal Practice (USPAP).
8. Respondent conceded that he made several mistakes in the appraisals, including violations of the applicable USPAP.
9. Those mistakes were both intentional and unintentional.
10. While Respondent had completed the required training and had opened his own real estate appraisal business, at the time of the appraisals, he was still learning the business.
11. The appraisals contained substantial errors, including the omission of material information and the misrepresentation of material information.
12. Respondent conducted the Elgin, City Park, and Hickory property appraisals to reach a pre-determined market value.
13. The Elgin property was not residential property, but agricultural property, and Respondent was not qualified or certified to perform this appraisal.
14. Respondent intentionally produced a fraudulent, inflated, misrepresentative, unreliable, and deficient real estate appraisal report for the Elgin property by:

- a. Misrepresenting the renovations done to the interior of the home and attaching photographs of the interior of another home with completed work on the bathrooms, kitchen, and room that Respondent claimed to be of the appraised house;
 - b. Misrepresenting that there were no adverse easements on the property when the property had a 170-foot power easement running the length of the property with a large electric tower 500 feet from the residence; and
 - c. Misrepresenting that the property was not in a flood zone when sixty plus acres are in the 100-year flood plain.
15. Respondent intentionally produced a fraudulent, inflated misrepresentative, unreliable, and deficient real estate appraisal report for the City Park property by using comparables to the property being appraised that were not actually comparable properties, serving to inflate the value of the property.
16. Respondent intentionally produced a fraudulent, inflated, misrepresentative, unreliable, and deficient real estate appraisal report for the Hickory property by failing to disclose its sales history of four sales in the last three years, two of which were to Waterfall Real Estate Investments.
17. The errors committed by Respondent in the appraisals resulted in inflated values for the properties, affecting mortgage loan amounts from lenders.
18. Other than being paid the standard fee for an appraisal and the opportunity for repeat business, Respondent did not benefit financially by inflating the market value of the Elgin, City Park, and Hickory properties in his appraisal reports.
19. After January 2007, Respondent began taking appraisal courses and has since taken 12 to 15 appraisal courses in order to perfect his skills as an appraiser. Respondent has also established systems in his office to ensure that all appraisals are completed properly.
20. On June 2, 2010, Staff mailed notice of the administrative hearing to Respondent.
21. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

22. The hearing on the merits was held September 13-14, 2010. All parties appeared and participated in the hearing. The record closed September 17, 2010, following the filing of written closing brief.

IV. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (the Board) has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification (Act), TEX. OCC. CODE ch.1103.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. ch. 2003.
3. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. ch. 2001.
4. Staff had the burden of proof, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.427.
5. A certified residential real estate appraiser, and an appraisal performed by a certified real estate appraiser, must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time an appraisal is performed. TEX. OCC. CODE § 1103.405 and 22 TAC § 155.1(a).
6. Based on the Findings of Fact and Conclusions of Law, Respondent violated TEX. OCC. CODE § 1103.405 and 22 TAC §§ 153.20(a)(3)(7)(8) and (9) and 155.1(a).
7. Based on the above Findings of Fact and Conclusions of Law, the Board may discipline Respondent for material misrepresentations and omissions of material fact contained in the appraisal for the purpose of arriving at a pre-determined value in accordance with TEX. OCC. CODE §§ 1103.405 and 22 TAC §§ 153.20(a)(7)(8) and (9).
8. The Board may suspend or revoke a certificate if the certificate holder violates either the Act, a Board rule, or failed to comply with the USPAP in effect at the time of the appraisal, pursuant to TEX. OCC. CODE § 1103.518 and 22 TEX. ADMIN. CODE § 153.20.
9. Based on the Findings of Fact, Respondent violated multiple applicable USPAP and Board Rules in effect in 2006 and 2007.

10. Based on the foregoing Findings of Fact and Conclusions of Law, the Board should revoke Respondent's appraiser certification. However, the Board should make a determination that Respondent can ask for reinstatement of his certification in the future.

SIGNED November 16, 2010.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 22, 2010

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

VIA FACSIMILE 512/465-3910

RE: Docket No. 329-10-4435.ALC; Texas Appraiser Licensing and Certification Board vs. James Lee Adams, TX-1335795-R

Dear Mr. Oldmixon:

On November 16, 2010, a Proposal for Decision and Proposed Order were submitted for the Board's consideration in the above-referenced cause. On December 6, 2010, James Lee Adams, Respondent, filed exceptions to the Proposal for Decision (PFD) issued in this case. On December 21, 2010, Staff filed a reply to Respondent's exceptions.

A review of Respondent's exceptions and Staff's reply revealed no legal or factual errors in the PFD. It is my recommendation that the Proposal for Decision be adopted without change.

Sincerely,

A handwritten signature in cursive script that reads "Catherine C. Egan".

Catherine C. Egan
Administrative Law Judge

CCE:nl

xc: Kerri O'Brien, 2901 Bee Caves Road, Austin, TX 78746 - **VIA FACSIMILE 512/328-6911**
Troy Beaulieu, 1101 Camino La Costa, Austin, TX 78752 **VIA FACSIMILE 512/465-3955**